

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Majority Shareholders of)	
Community Telephone Company, Inc. and Its)	
Wholly Owned Subsidiary, Comcell, Inc.)	
Transferors)	
)	
and)	WC Docket No. 10-151
)	
Hilliary Communications, LLC,)	
Transferee)	
)	
For Consent to Transfer Control pursuant to Section 214)	
of the Communications Act of 1934, as amended)	

Reply to Comments of Charles D. Mattingly, Jr./PP Capital

The majority shareholders of Community Telephone Company, Inc. and its wholly owned subsidiary, Comcell, Inc. (collectively, “Community” or “Transferors”) and Hilliary Communications, LLC (“Hilliary” or “Transferee”) (collectively, “Applicants”) hereby reply to the Comments filed by Charles D. Mattingly, Jr./PP Capital (“Petitioner”) opposing grant of the captioned Application. The Comments are unsupported allegations that contain no cognizable legal grounds for denial of the Application. Accordingly, the Petition’s plea for the Application’s dismissal should be rejected. Furthermore, there is no reason for the Commission to delay its independent review of relevant issues that lie within its sole jurisdiction. Applicants therefore request prompt approval of the applications for transfer of

control currently before the Commission,¹ allowing the timely consummation of the proposed transaction upon the receipt of all relevant regulatory approvals.

Petitioner poses three theories for dismissal of the Application: (1) grant would be “detrimental to the financial position of the minority shareholders of Community Telephone Company;”² (2) “the absence of an ownership transfer application filing at the Texas Public Utility Commission”³ renders the Application defective; and (3) that the “complexity” of the relationship between the proposed Transferee, Hilliary Communications, LLC (“Hilliary”) and its affiliates “may result in litigation.”⁴ These allegations are not relevant to the decision before the Commission: whether the proposed transfer of control of federal authorizations will serve the public interest, convenience and necessity. Although Petitioner pays lip service to a public interest inquiry, the veneer is thin: all purported concerns regarding the public interest⁵ lead back to Petition’s self-interest as a purported⁶ minority shareholder.

¹ In addition to the instant Application, (the application for transfer the control of the international Section 214 authorization has been assigned File No. ITC-T/C-20100722-00303), two applications for the transfer of control of wireless licenses are also pending: File No. 0004328821, seeking authorization to transfer control of the license for Station KVVH861; and File No. 004328831, seeking authorization to transfer control of the license for Station WPOH449.

² Comments at paragraph 1.

³ *Id.*

⁴ Comments at paragraph 4.

⁵ Petitioner refers to the public interest only as it may be hypothetically affected by private litigation: “PP Capital believes that . . . possible litigation would not serve the public interest” (Comments at paragraph 2); “possible litigation associated with this transaction would tie up resources . . . and would detract from providing . . . services (Comments at paragraph 4); “confusion of ownership interest . . . may result in litigation . . . [that] would draw financial and management resources away for the operations of Community Telephone Company” (*id.*). As more fully developed in the Section II.A. of this Reply, private litigation issues are not germane to the issues before the Commission in this proceeding.

⁶ Neither PP Capital nor Mr. Mattingly are listed as stockholders according to the Community stock transfer records. Furthermore, the referenced 2009 tender offer was made not by “PP Capital principal Charlie Mattingly” (Comments at paragraph 2), but rather by VNC Enterprises, LLC, (“VNC”), an entity owned in part by Mr. Mattingly. VNC is currently an applicant before this Commission, seeking authorization pursuant to Section 214 to assume control of Nova Telephone Company (WC Docket No. 10-136). Neither is VNC listed as an owner of Community shares.

I. The Standard of Review and the Public Interest Inquiry Framework

Section 214 of the Communications Act of 1934, as amended, (the “Act”) requires a public interest finding to justify the grant of authorization for the transfer of control of an entity holding Section 214 authorization.⁷ The established public interest review process consists of three basic inquiries: Does the transaction comply with the Act, the Commission’s rules, and other applicable law? Could grant result in harm to the public by impairing the objectives or goals of the Act, or other applicable laws? And, finally, if potential harm is identified, can it be balanced against potential benefit arising from the transactions?⁸

As demonstrated in the Application (and is not challenged by Petitioner), the proposed transaction is consistent with the Act and the Commission’s rules. Furthermore, neither the Application nor the Petitioner raises any issue related to other applicable laws, historically confined to issues of national security, foreign trade policy, and law enforcement matters, in addition to matters of competitive effects.⁹ As shown in the Application, there are no foreign owners of Hilliary, and no affiliation with foreign carriers. The Application raises

⁷ 47 U.S.C. § 214(a).

⁸ “In making [the public interest] determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission’s rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.” Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules, CC Docket 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14737 (*citations omitted*)(*rev’d on other grounds*) (1999). Similarly, Section 310(d) provides that no construction permit or station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the “public interest, convenience, and necessity will be served thereby.” 47 U.S.C. § 310(d).

⁹ See, e.g., AT&T Corp, British Telecommunications, *et al.*, 14 FCC Rcd 19140, 19148 (1999); Applications of VoiceStream Wireless Corporation, *et al.*, 16 FCC Rcd 9779 (2001).

no issues related to national security or foreign policy matters. There are no adverse competitive effects. After consummation of the proposed transaction, all companies affiliated with Transferor Hilliary will have a market share in the interstate, interexchange market of less than 10%, and, in combination, fewer than two (2) percent of the subscriber lines installed in the aggregate nationwide.¹⁰ There will be no new adjacent services areas, and the single instance of new overlapping service areas occurs where a Community affiliate owns a minority ownership interest in one of the many wireless service providers currently serving a county also served by a Hilliary local exchange company affiliate.¹¹ This insignificant overlap has no negative effect on competition, nor does any other aspect of the proposed transaction impair or frustrate other Commission policy objectives.

Furthermore, the consolidation of the operations of two small family-owned businesses will serve the public interest by generating increased administrative efficiencies for the current customers of both parties.¹² Consistent with Commission rules and precedent, and as demonstrated in the Application, the public interest would be served by grant of authorization to consummate the proposed transaction.

¹⁰ Application at p. 12.

¹¹ Comcell, Inc., a Community affiliate, owns 26.21% of the equity interests of Choice Wireless, LC (“Choice”). Choice holds PCS licenses to serve the Lawton-Duncan, Oklahoma BTA, which includes Comanche, County, Oklahoma, currently provided local exchange service by Medicine Park Telephone Company, a Hilliary affiliate. Application at n. 4.

¹² Application at p. 13.

II. Grant Will Not Harm the Public Interest

The Comments do not, and cannot, dispute Hilliary's qualifications to hold Commission authorizations. Furthermore, Petitioner does not, and cannot, demonstrate that the public interest would be harmed by consummation of the proposed transaction. The allegations in the Petition, even if substantiated, simply do not address public interest considerations recognized by the Commission as relevant to this inquiry. Accordingly, the Comments do not constitute grounds for denial, or even delay of grant, of the Application.

A. Existence or Threat of Private Litigation is Not Grounds for Dismissal

Assuming, *arguendo*, that Petitioner has the standing or grounds for a complaint related to minority shareholder rights, this dispute is clearly a matter of state law. It is well established that the Commission is not the proper forum for the resolution of private contractual disputes.¹³ The Commission has held specifically that the issue of minority shareholders' rights is a matter for state courts.¹⁴

Not only do minority shareholder rights issues fail to provide grounds for dismissal, such issues do not even merit a delay of the Commission's decision on the Application. The Commission does not defer consideration of outstanding matters pending the outcome of litigation involving private litigation matters.¹⁵ Given that there is no pending litigation, but

¹³ See, e.g., *Sonderling Broadcasting Co.*, 46 Rad. Reg.2d (P&F) 890, 894 (1979).

¹⁴ *John R. Kingsberry*, 71 FCC 2d 1173, 1174 (1979) (Commission refused to consider minority shareholder allegation of breach of fiduciary duty).

¹⁵ *Mid-Missouri Telephone Company, Order*, DA 99-2407, 1999 WL 993779 at para. 5 (WTB 1999)(citations omitted).

merely the suggestion that litigation may occur, there is absolutely no justification for delaying decision in this matter.

B. State Approval Is Not a Prerequisite to Commission Consideration

Applicants are well aware of the dual regulatory environment in which they operate, and understand that both state and federal authorizations are required prior to consummation of the proposed transaction. However, state and federal jurisdiction over elements of this transaction are distinct, not overlapping, and the Commission's authority within its subject matter jurisdiction certainly is not subordinate to a state's exercise of authority within its own jurisdiction. No state has jurisdiction over the subject matter of this Application or any of the other federal authorizations sought by Applicants.¹⁶

Contrary to Petitioner's unsupported "belief," there is no "proper order" for the discrete exercise of state or federal jurisdiction by the appropriate regulatory body with respect to proposed transfers of control. Each agency operates independently, controlling its own docket, and allocating resources according to its own procedures and statutory mandates. Applicants understand that both federal and state regulatory approvals are necessary prerequisites to consummation of the proposed transaction. The Texas Public Utilities Commission shortly will be reviewing the relevant state regulatory matters arising

¹⁶ The Application seeks authorization to transfer control of domestic interstate and international authorizations. Interstate and foreign communications are "totally entrusted to the FCC," *National Ass'n of Regulatory Util. Com'rs v. FCC*, 746 F.2d 1492, 1501 (D.C.Cir.1984). Similarly, Applicants' request to transfer control of wireless licenses (*see supra* n. 1) falls within the exclusive jurisdiction of the Commission under Title III of the Act. *See, e.g., Farina v. Nokia*, 578 F.Supp.2d 740, 762 (E.D.Pa.2008)(the FCC is the "sole authority over licensing of radio facilities . . .").

from the proposed transaction,¹⁷ and Applicants are confident that approval from that body will issue forthwith. In the interim, the Commission's mandate to resolve matters properly before it promptly and efficiently¹⁸ requires action without delay.

C. Hilliary's Ownership Structure Is Transparent, and Consistent with the Law

Taking yet another bite at the irrelevant minority shareholder interest argument, Petitioner finally argues for dismissal based on its theory that "the confusion of ownership interests among [Hilliary's] commonly held affiliates may result in litigation," which may, in turn, "be of detriment to minority shareholder interests."¹⁹ As demonstrated above, private litigation matters are irrelevant to this proceeding.

From a factual perspective, moreover, Hilliary's ownership interests are not "confusing," but are fully explained in the Application.²⁰ Instead, it is Petitioner's argument that is confusing, with its vague reference to "future lawsuits"²¹ that specify neither grounds, litigants, nor forums for such suits, nor even the purported harm to be addressed in such suits. For the purposes of this inquiry, however, the only relevant factor associated with the purported "complexity" of Transferee's ownership structure is that the structure is

¹⁷ An application seeking the authorization of the Texas Public Utilities Commission to consummate the proposed transaction will be filed shortly. Applicants will supplement the record in this proceeding once the state docket number is assigned.

¹⁸ Section 4(j) of the Act requires the Commission to conduct its procedures "in such manner as will best conduce to the proper dispatch of business and the ends of justice." 47 U.S.C. §154(j).

¹⁹ Petitioner's repeated attempts to elevate threats of litigation to the level of a public interest concern are illogical, unsupported and unpersuasive. While any litigation, be it contract or tort, regulatory or commercial, inevitably requires attention and resources, such activity is simply (and unfortunately) another cost of doing business in today's environment. It is sheer speculation to suggest that the mere possibility of a lawsuit among purported owners of a business enterprise compromises that company's ability to conduct business.

²⁰ See Application, pp. 6, 10-11.

²¹ Comments at paragraph 4.

sufficiently transparent to allow the Commission's review of Hilliary's qualifications to hold federal authorizations, and to enable the Commission to conduct its analysis of public interest issues.

The Application identifies Hilliary's owners and, as required by the Commission's Rules, the owners' other telecommunications interests.²² Together with similar data related to Transferors' ownership and interest, the Commission has before it the information required to perform its qualification and public interest analysis. And, as demonstrated in the Application and Section I of this Reply, Hilliary is a qualified holder of Commission authorizations, and the proposed transaction will further the public interest.

Yet Petitioner ignores fact, law and procedure, to promote its own narrow financial interests in the wrong forum. Without reference to a single Commission rule or precedent, Petitioner would have the Commission refuse to exercise its statutory mandate to review Transferee's qualifications and the public interest implications of the proposed transaction. There is, of course, no rule or precedent justifying such an approach; this specious argument should be summarily rejected.

III. Conclusion

Petitioner has presented a series unsupported allegations that, even if true, would not rise to the level of a legitimate public interest inquiry. In contrast, the record in this case demonstrates that Hilliary is a qualified Applicant, and that the proposed transaction will serve the public interest. In light of the foregoing, the Applicants respectfully requests

²² See 47 C.F.R. § 63.04(a)(7) (requiring information regarding affiliates' provision of telecommunications services).

rejection of Petitioner's claims and prompt grant of the necessary federal authorization to consummate the proposed transaction.

Respectfully submitted,

**Majority Shareholders of Community
Telephone Company, Inc. and its
Wholly owned Subsidiary, Comcell, Inc.,**

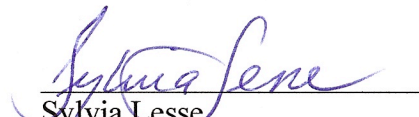
Transferors

and

Hilliary Communications, LLC,

Transferee

By:


Sylvia Lesse
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September 7, 2010

DECLARATION OF CLIFFORD HUMPERT

I, Clifford Humpert, General Manager of Community Telephone Company, an authorized representative of the Majority Shareholders of Community Telephone Company, Inc., and Vice President of Comcell, Inc., do hereby declare under penalty of perjury that I have read the foregoing "**Reply to Comments of Charles D. Mattingly, Jr./PP Capital,**" and the information contained therein regarding Community Telephone Company, the Majority Shareholders of Community Telephone Company, Inc., and Comcell, Inc. is true and accurate to the best of my knowledge, information, and belief.

9-7-2010

Date



Clifford Humpert

DECLARATION OF EDWARD E HILLIARY, JR.

I, Edward E. Hilliary, Jr., Secretary/Treasurer of Hilliary Communications, LLC, do hereby declare under penalty of perjury that I have read the foregoing **"Reply to Comments of Charles D. Mattingly, Jr./PP Capital,"** and the information contained therein regarding Hilliary Communications, LLC is true and accurate to the best of my knowledge, information, and belief.

9/7/2010
Date

Edward E Hilliary, Jr.
Edward E. Hilliary, Jr.

CERTIFICATE OF SERVICE

I, Sylvia Lesse, of Communications Advisory Counsel, LLC, do hereby verify that on this 7th day of September, 2010, I caused to be sent via First Class US Mail, postage prepaid, the foregoing "REPLY TO THE COMMENTS OF CHARLES D. MATTINGLY, JR./PP CAPITAL" to the following:

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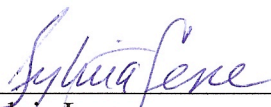
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